

### **REMARKS**

This communication responds to the Office Action of December 10, 2008, in which the Examiner rejected claims 25-39 under 35 U.S.C. § 112, and claims 1-7, 10-11, 14 and 33-36 under 35 U.S.C. § 102(b). The examiner also indicated that claims 25-32 would be allowable if amended to overcome the § 112 rejections. In response, claims 1 and 25 have been amended and claims 35-39 have been cancelled. In view of the amendments and the following remarks, reconsideration and allowance are respectfully requested.

#### **Interview Summary**

Applicants thank Examiner Theodore J. Stigell for the courtesy of the telephonic interview held on March 9, 2009, with Applicants' representative, Adam M. Bramwell. In the interview, Claim 1 of the present application, and U.S. Pat. No. 6,093,172 were discussed. While a formal agreement was not reached, pursuant to the interview, it is Applicants' understanding that amended claim 1 is patentable over the art of record. Applicants believe all issues were resolved in the interview and that a notice of allowance will be issued in due course. However, the Examiner is invited to contact the undersigned or David E. Bruhn (612-340-6317) if any issues remain.

#### **Allowable Subject Matter**

Applicants respectfully acknowledge and appreciate the indication by the examiner that claims 25-32 would be allowable if amended to overcome the § 112, second paragraph, rejections set forth in the Office Action.

#### **Claim Rejections Under 35 USC §112**

Claims 25-39 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 25-32 have been amended to recite a single cannula. Reconsideration and allowance are thus respectfully requested.

#### **Claim Rejections Under 35 USC §102**

Claims 1-7, 10-11, 14, 33-34, and 35-36 are rejected under 35 USC §102(b) as being anticipated by U.S. Patent 6,093,172 ("Funderburk"). The rejections are traversed for at least the following reasons.

Funderburk does not disclose or suggest an insertion device in which a protective element for accommodating a cannula is removably connected to a base body, wherein the cannula is expelled from the protective element through an opening in the base body as recited in claims 1 and 25. Instead, in Funderburk the cannula 26 is formed as part of the insertion set 14 (see Fig. 4 including the insertion needle 12 and Fig. 16 illustrating removal of the insertion needle from the set). The insertion set 14 is contained in and expelled from the barrel 28 as illustrated, for example, in Figs. 5, 7 and 9 of Funderburk. In Fig. 9, the barrel 28 is positioned "firmly against the patient's skin, with the insertion set 14 supported in the proper orientation and at a predetermined distance from the skin 16." *Funderburk* at col. 8, lines 42-45. The insertion set 14 is then expelled from the barrel as illustrated in Figs. 5 and 7. Upon expulsion, the cannula 26 does not pass through anything other than the patient's skin. Thus, Funderburk does not disclose the recited base body that is removably coupled to the protective element and having an opening through which the cannula is expelled. Therefore, claim 1 is believed to be patentable over Funderburk for at least the foregoing reason.

Moreover, Funderburk does not disclose or suggest an insertion device in which, in a retracted position, the cannula is positioned spaced apart from the base body as recited in claim 1. Rather, as discussed above, in Funderburk the cannula 26 is formed as part of the insertion set 14. As illustrated in Fig. 9, in an initial position in which the insertion set 14 is provided within the barrel 28, the cannula 26 is not provided spaced apart from the insertion set 14. Thus, Funderburk does not disclose the recited cannula positioned spaced apart from the base body. Therefore, claim 1 is believed to be patentable over Funderburk, additionally, for at least the foregoing reason. Reconsideration and allowance are thus respectfully requested.

Claims 2-7, 9-11, 14, and 33-34 depend either directly or indirectly from claim 1. Accordingly, these claims are believed to be patentable for at least the reasons presented above and, further, in view of their additional recitations. Reconsideration and allowance are thus respectfully requested.

**Conclusion**


This application now stands in allowable form and reconsideration and allowance is respectfully requested.

This response is being submitted on or before March 10, 2009, making this a timely response. It is believed that no additional fees are due in connection with this filing. However, the Commissioner is authorized to charge any additional fees, including extension fees or other relief which may be required, or credit any overpayment and notify us of same, to Deposit Account No. 04-1420.

Respectfully submitted,

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